

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS,
AUSTIN DIVISION

:
FLASHPARKING, INC., : CIV. NO: 1:23-cv-00772-DII
Plaintiff, :
v. :
MICHAEL SELLERS MACDONALD, :
Defendants. : AUGUST 10, 2023
:

**MOTION TO DISMISS THE COMPLAINT FOR IMPROPER VENUE, FORUM NON
CONVENIENS, AND, IN THE ALTERNATIVE, MOTION TO DISMISS FOR
FAILUTRE TO STATE A CLAIM AND MOTION TO TRANSFER VENUE**

Pursuant to Federal Rules of Civil Procedure 12(b)(3), 28 USC §1406(a), and Local Rule CV-7, Defendant Michael MacDonald (hereinafter referred to as “Defendant” or “MacDonald”) respectfully moves to dismiss Plaintiff’s Amended Complaint dated June 15, 2023 for improper venue, for *forum non conveniens* and, in the alternative, to dismiss Plaintiff’s Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim and to transfer venue pursuant to 28 USC §1406(a).

Plaintiff is a billion dollar Company that develops and sells software and hardware to assist its customers with parking solutions across Texas and the United States. Defendant was employed as the Director of Product Operations for Plaintiff. His job was terminated on May 24, 2023 (with a last day of June 16, 2023) because, allegedly, his “position was being eliminated.” Defendant, for his entire tenure with Plaintiff, worked remotely from his home office in Connecticut and resided in Connecticut. All facts and events alleged by the Plaintiff occurred in Connecticut. As the Director of Product Operations, Defendant has never visited or been physically located in the

state of Texas. Further, the only time Defendant used Plaintiff's alleged confidential and proprietary information was in the course and scope of his employment and for the benefit of Plaintiff. There was no misappropriation of information or improper use as alleged by Plaintiff.

As set forth more fully in the accompanying memorandum of law, the Court should grant Defendant's motion to dismiss Plaintiff's Amended Complaint for improper venue, for *forum non conveniens* or, in the alternative, grant Defendant's motion to dismiss Plaintiff's Amended Complaint its entirety as all claims alleged are not sustainable as a matter of law. If any of Plaintiff's claims do survive this motion to dismiss, the Defendant requests that his motion to transfer venue to the United States District Court, District of Connecticut be granted.

Respectfully Submitted,

DEFENDANT
MICHAEL SELLERS MACDONALD

By:/s/ Kirsten M. Schneider
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CERTIFICATION OF SERVICE

Pursuant to Efilng federal and local rules, this is to certify that on August 10, 2023, a copy of the foregoing was filed electronically on the United States District Court, Western Div. Texas, Austin efilng system, emailed to the parties below, and delivered to all those with access to such efilng system and mailed, postage prepaid, to those parties without electronic access. The electronic transmission was reported as complete.

/s/ Kirsten M. Schneider
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The foregoing document was emailed to:

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